

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 09-N-11305-RAH
)	
MARK STEVEN WILLIAMS,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 177754,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default disciplinary matter, respondent **Mark Steven Williams** is charged with failure to comply with California Rules of Court, rule 9.20.¹

The court finds, by clear and convincing evidence, that respondent is culpable of the alleged counts of misconduct. In view of respondent's serious misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar). The Notice of Disciplinary Charges (NDC) was filed and properly served on respondent at his official membership records address on August 3, 2009. Respondent filed a response to the NDC on August 27, 2009.

¹ References to rules are to the California Rules of Court, unless otherwise noted.

On February 8, 2010, a status conference was held and attended by respondent, at which time a further status conference was ordered to take place on February 18, 2010 at 10:15 a.m. and the matter was reassigned to the undersigned judge. Respondent did not participate in the February 18, 2010 status conference. The court ordered a follow-up status conference to take place telephonically on March 4, 2010, at 9:30 a. m. A copy of the court's February 18, 2010 status conference order was properly served on respondent at his official membership records address.

The March 4, 2010 telephonic status conference was held as scheduled. Respondent participated in that status conference. At that status conference, a pretrial conference was scheduled for May 27, 2010, and the matter was set for trial to commence at 9:30 a.m. on July 7, 2010. The court also ordered the parties to file pretrial statements on or before May 13, 2010. Thereafter, a trial-setting order, setting forth each of the above obligations and dates, was served and filed on March 10, 2010.

Notwithstanding the court's orders, respondent failed to file a pretrial conference statement. Moreover, respondent failed to participate in the May 27, 2010 pretrial conference. Thereafter, on June 2, 2010, the court issued a status conference order which, among other things, notified respondent that he would be precluded from offering testimonial or documentary evidence other than his own testimony at trial and informing the parties that they would be notified of the commencement date of the trial. On June 2, 2010, a copy of the order was properly served on respondent at his official membership records address.

The court also issued a Notice of Telephonic Status Conference in the matter to take place on July 6, 2010 at 10:00 a.m. to discuss the commencement date of the trial. On June 2, 2010, a copy of the order was properly served on respondent at his official membership records address.

Thereafter, on June 25, 2010, the State Bar properly served respondent with a Notice in Lieu of Subpoena, requiring respondent's attendance at trial on July 7-9, 2010, or as otherwise scheduled by the Court.

On July 6, 2010, the telephonic status conference was held as scheduled. Respondent did not participate. The court ordered the trial to commence "as previously scheduled."

The case was called for trial on July 7, 2010, as had been scheduled. Respondent was not present at trial. The court ordered that respondent's default be entered under rule 201 of the Rules of Procedure based on respondent's failure to appear at trial. The court also ordered that he be enrolled as an inactive member effective July 10, 2010.

The matter was submitted for decision on July 14, 2010, following the filing of the State Bar's brief on culpability and level of discipline. On July 23, 2010, the State Bar filed a request for leave to file two additional exhibits. On August 3, 2010, finding good cause, the court granted the State Bar's request, vacated the July 14, 2010 submission date, and admitted exhibits 1 through 12 into evidence. The matter was submitted on August 3, 2010.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

Respondent was admitted to the practice of law in California on October 5, 1995, and has since been a member of the State Bar of California.

Violation of California Rules of Court, Rule 9.20

On November 21, 2008, in California Supreme Court case No. S166857 (State Bar Court case No. 06-C-13063), the Supreme Court suspended respondent from the practice of law in California for two years, stayed, stayed the execution of that period of suspension, subject to

certain conditions, including that he be suspended from the practice of law for two years and remain suspended until he has shown satisfactory proof to the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. Among other things, the Supreme Court ordered respondent to comply with California Rules of Court, rule 9.20(a) and (c), within 30 and 40 days, respectively, after the effective date of the Supreme Court order. The order, which was duly served on respondent, became effective 30 days after it was filed, i.e., December 21, 2008. (Cal. Rules of Court, rules 8.532(a) and 9.18(b).)

California Rules of Court, rule 9.20(c) mandates that respondent “file with the Clerk of the State Bar Court an affidavit showing that he or she has fully complied with those provisions of the order entered under this rule.”

Pursuant to the November 21, 2008 Supreme Court order, respondent was to have filed the rule 9.20 affidavit by January 30, 2009. On or about December 23, 2008, the Office of Probation of the State Bar (Office of Probation) sent respondent a courtesy letter reminding him of his duty to comply with rule 9.20. The letter was deposited in the United States mail, with postage fully prepaid, addressed to the address respondent then maintained with the State Bar in accordance with Business and Professions Code section 6002, subdivision (a). The letter was not returned to the State Bar by postal authorities as undeliverable or for any other reason.

Respondent, however, did not file a declaration of compliance with the Clerk of the State Bar Court by January 30, 2009.

On or about March 23, 2009, the Office of Probation sent respondent a second courtesy letter reminding him of his duty to comply with rule 9.20. The letter was deposited in the United States mail, with postage fully prepaid, addressed to respondent at the address he then maintained with the State Bar in accordance with Business and Professions Code section 6002,

subdivision (a).² The letter was not returned to the State Bar by postal authorities as undeliverable or for any other reason.

On April 8, 2009, respondent filed his rule 9.20 declaration.

Whether respondent is aware of the requirements of rule 9.20 or of his obligation to comply with those requirements is immaterial. “Willfulness” in the context of rule 9.20 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 9.20. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Respondent did not timely file an affidavit in compliance with rule 9.20 with the Clerk of the State Bar Court by January 30, 2009, as required by the Supreme Court Order. The fact that respondent eventually complied with his obligations under rule 9.20 does not avoid culpability for being late in that compliance. (*In the Matter of Rose* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 192; *In the Matter of Friedman* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 527.)

Therefore, the State Bar has established by clear and convincing evidence that respondent willfully failed to comply with rule 9.20, as ordered by the Supreme Court in S166857.³

Furthermore, respondent’s failure to comply with rule 9.20 constitutes a violation of Business and Professions Code section 6103, which requires attorneys to obey court orders and provides that the willful disobedience or violation of such orders constitutes cause for disbarment or suspension.

² All references to section are to the Business and Professions Code, unless otherwise indicated.

³ Specifically, rule 9.20(d) provides that a suspended attorney’s willful failure to comply with rule 9.20 constitutes a cause for disbarment or suspension and for revocation of any pending probation. Additionally, such failure may be punished as a contempt or a crime.

IV. Mitigating and Aggravating Circumstances

The parties bear the burden of establishing mitigation and aggravation by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct,⁴ stds. 1.2(e) and (b).)

A. Mitigation

No mitigation was submitted into evidence. (Std. 1.2(e).)

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent has two prior records of discipline. (Std. 1.2(b)(i).)

1. In his first prior record, the California Supreme Court ordered respondent suspended from the practice of law for two years, stayed, with a two-year probationary period, including a six-month actual suspension. (Supreme Court case No. S153990, filed March 24, 2010; State Bar Court case No. 00-O-12707.) Respondent was found culpable of (1) engaging in multiple acts of moral turpitude and dishonesty in violation of section 6106; (2) violating his duty, under section 6068, subdivision (a), to obey the law; and (3) failing to report to the State Bar that his medical license had been revoked as required under section 6068, subdivision (o)(6). The aggravating circumstances were: (1) that respondent committed uncharged misconduct, which was surrounded by bad faith, dishonesty, concealment, and overreaching; (2) that respondent's misrepresentations harmed the public and the administration of justice; and (3) respondent's indifference toward rectification of or atonement for the consequences of his misconduct. The mitigating circumstances were respondent's

⁴ Future references to standard(s) or std. are to this source.

(1) participation in the State Bar's Lawyer Assistance Program; (2) attendance at weekly group and individual therapy sessions; (3) volunteer work at Stanford University; and (4) other community service.

2. In his second prior record, the underlying matter, the California Supreme Court ordered respondent suspended from the practice of law for two years, stayed, with a three-year probationary period, including a two-year actual suspension and until he has shown proof satisfactory to State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney sanctions for Professional Misconduct. While the facts and circumstances surrounding respondent's criminal convictions were found to involve conduct warranting discipline, they were not found to involve moral turpitude. The aggravating circumstances were: (1) respondent's prior record of discipline; (2) respondent's indifference and lack of understanding of the consequences of his misconduct and his lack of insight into the nature and extent of his misconduct; and (3) respondent's failure to attend the pretrial conference. The mitigating circumstances were (1) the lack of client harm and (2) respondent's volunteer work and community service. (Supreme Court case No. S166587, filed November 21, 2008; State Bar Court case No. 06-C-13063.)

Respondent initially appeared in these proceedings. However, respondent's subsequent failure to cooperate and participate in this disciplinary matter prior to the entry of his default is a serious aggravating factor. Respondent's failure to appear at the pretrial conference of which he had notice is a serious aggravating circumstance, as is his failure to appear for trial on July 7, 2010. Not only was respondent given notice of the trial, but, as set forth, *ante*, the State Bar served respondent with a notice to appear in lieu of subpoena in accordance with Code of Civil

Procedure section 1987. (Rules Proc. of State Bar, rules 152, 210.) By ignoring the notice to appear in lieu of subpoena with which he had been served, respondent, in effect, disobeyed a subpoena to appear before the State Bar Court. (Cf., *In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 702-203.) (Std. 1.2(b)(vi).)

V. Discussion

Respondent's willful failure to comply with rule 9.20(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Respondent has demonstrated an unwillingness to comply with the professional obligations and rules of court imposed on California attorneys although he has been given opportunities to do so.

Therefore, respondent's disbarment is necessary to protect the public, the courts and the legal community, to maintain high professional standards, and to preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for his willful disobedience of the Supreme Court order.

VI. Recommendations

A. Discipline

Accordingly, the court recommends that respondent **Mark Steven Williams** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

B. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁵

C. Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VI. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under Business and Professions Code section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: October ____, 2010

RICHARD A. HONN
Judge of the State Bar Court

⁵Respondent is required to file a rule 9.20(c) affidavit even if he has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)